

**Letter of Findings: 42-20200219  
International Fuel Tax Agreement (IFTA) Penalty  
For the Year 2017**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

Despite Indiana Motor Carrier's failure to document and maintain fuel consumption and mileage records required under the IFTA, the Department agreed with Motor Carrier that its failure to do so was not "willful neglect" and that Motor Carrier's request to abate the ten-percent penalty should be granted.

### ISSUE

#### **I. International Fuel Tax Agreement - Penalty Assessment.**

**Authority:** IC § 6-6-4.1-4(a); IC § 6-6-4.1-14(a); IC § 6-6-4.1-20; IC § 6-6-4.1-24(b); IC § 6-8.1-3-14; IC § 6-8.1-5-4(a); IC § 6-8.1-5-1(c); IC § 6-8.1-10-2.1(a)(2); IC § 6-8.1-10-2.1(a)(3); IC § 6-8.1-10-2.1(d); IFTA Articles of Agreement, § R1210 (2017); IFTA Articles of Agreement, § R1220.100 (2017); IFTA Procedures Manual, § P510 (2017); IFTA Procedures Manual, § P530 (2017); IFTA Procedures Manual, § P530.100 (2017); IFTA Procedures Manual, § P530.100 (2013); IFTA Procedures Manual, § P540.100 (2017); IFTA Procedures Manual § P550 (2017); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#); International Fuel Tax Agreement, <https://www.fin.gov.on.ca/en/tax/ifta/>.

Taxpayer argues it is entitled to an abatement of the penalty charges attributable to the Department's assessment of additional IFTA tax.

### STATEMENT OF FACTS

Taxpayer is an Indiana motor carrier which - according to publicly available information - transports machinery, grain, animal feed, hay, and construction materials. Taxpayer provides year-round services to customers in Indiana and outside Indiana.

Taxpayer employs approximately two drivers and operates approximately two vehicles which travel both interstate and intrastate highways in providing Taxpayer's hauling services. Taxpayer chose Indiana as its base jurisdiction for purposes of the International Fuel Tax Association ("IFTA"). The Indiana Department of Revenue ("Department") conducted an IFTA audit, which resulted in the assessment of additional 2017 IFTA taxes. Along with the assessment of the tax, the Department also imposed penalty and interest amounts.

Taxpayer agreed that the tax assessment was appropriate but disagreed with the penalty assessment. Taxpayer submitted a protest to that effect. In its protest submission, Taxpayer asked the Department to issue a "[f]inal determination without a hearing." As requested, no hearing was conducted and this Letter of Findings results.

#### **I. International Fuel Tax Agreement - Penalty Assessment.**

### DISCUSSION

#### **A. Indiana's Audit Findings.**

The Department conducted a fuel tax audit of Taxpayer's records and determined that Taxpayer owed additional 2017 IFTA fuel tax. The assessment was attributable to the Department's finding that, as Taxpayer's owner describes, "[M]y reporting of my gallons was incorrect and that I must have purchased more fuel than I stated." In

the audit report, the Department explained:

The licensee did not maintain quarterly vehicle distance and fuel summaries by unit . . . so the auditor could not substantiate that the distance and fuel from each of their vehicles matched what was reported on their returns.

. . . .

The auditor sampled the 2nd quarter of 2017 for distance. The auditor found differences between reported and audited distances for Alabama, Georgia, Indiana, Kentucky, Ohio, and Tennessee. The auditor isolated the error rates. Even though some of the error rates were material, the error rates were still isolated because the licensee's operations were not consistent in nature such as traveling the same routes.

The audit report noted that Taxpayer's record-keeping shortcomings impacted the audit process. As a result, the Department - representing Indiana as Taxpayer's "base jurisdiction" - was unable to accurately apportion the proper amount of tax owed the various member jurisdictions in which Taxpayer traveled during the period under review.

As a result, based upon the limited information available, and because the audit gave no credit for fuel that was not supported by a retail invoice, the Department concluded that Taxpayer owed approximately \$1,300 in additional IFTA tax. Along with that tax, the Department also assessed approximately \$200 in interest and \$130 in penalties. It is this last amount with which Taxpayer disagrees.

#### **B. Taxpayer's Burden of Establishing That the Penalty Assessment Should be Abated.**

As a threshold issue, it is Taxpayer's responsibility to establish that the proposed penalty assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

#### **C. IFTA Requirements and Taxpayer's Responsibilities Under That Agreement.**

IFTA is an agreement between various United States jurisdictions and certain Canadian provinces allowing for the equitable apportionment of previously collected motor carrier fuel taxes. International Fuel Tax Agreement, <https://www.fin.gov.on.ca/en/tax/ifta/> (last visited March 12, 2020). The agreement's stated goal is to simplify the taxing, licensing, and reporting requirements of interstate motor carriers such as Taxpayer. The agreement itself is not a statute but was implemented in Indiana pursuant to the authority specifically granted under IC § 6-6-4.1-14(a) and IC § 6-8.1-3-14.

Taxpayer operated trucks in Indiana. As such, it operated on Indiana highways and consumed motor fuel while on those highways. Therefore, the Taxpayer was subject to Indiana motor carrier fuel taxes under the IFTA. IC § 6-6-4.1-4(a).

Tax assessments of motor carrier fuel tax under IFTA are presumed to be valid. IC § 6-6-4.1-24(b). In addressing any challenges to those assessments, the taxpayer bears the burden of proving that any assessment is incorrect. *Id.* The taxpayer has a duty to maintain books and records and present them to the Department for review upon the Department's request. IC § 6-6-4.1-20; IC § 6-8.1-5-4(a).

Taxpayer, as an IFTA licensee, is subject to the record-keeping rules of IFTA. According to the IFTA Procedures Manual, § P530 (2017) in part, imposes upon licensees the responsibility to maintain verifiable mileage and fuel purchase records:

The records maintained by a licensee under this article shall be adequate to **enable the base jurisdiction to verify the distances traveled and fuel purchased by the licensee** for the period under audit and to evaluate the accuracy of the licensee's distance and fuel accounting systems for its fleet. The adequacy of a licensee's records is to be ascertained by the records' sufficiency and appropriateness. Sufficiency is a measure of the quantity of records produced; that is, whether there are enough records to substantially document the operations of the licensee's fleet. The appropriateness of the records is a measure of their quality; that is, whether the records contain the kind of information an auditor needs to audit the licensee for

the purposes stated in the preceding paragraph. Records that are sufficient and appropriate are to be deemed adequate.

**(Emphasis added).**

The IFTA Procedures Manual at § P550.100 (2017) imposes upon IFTA licensees the responsibility of maintaining and then providing verifiable fuel purchase and fuel consumption records.

The licensee shall maintain complete records of all motor fuel purchased, received, or used in the conduct of its business, and on request, produce these records for audit. The records shall be adequate for the auditor to verify the total amount of fuel placed into the licensee's qualified motor vehicles, by fuel type.

One of those record keeping requirements is maintaining specific records such as fuel receipts per § P550 and detailed distance records with supporting documentation per § P540 of the IFTA Procedures Manual (2017). According to the IFTA Procedures Manual, § P510 (2017) provides in part that:

A licensee shall retain the records of its operations to which IFTA reporting requirements apply for a period of four years following the date the IFTA tax return for such operations was due or was filed, whichever is later, plus any period covered by waivers or jeopardy assessments. A licensee must preserve all fuel and distance records for the period covered by the quarterly tax returns for any periods under audit in accordance with the laws of the base jurisdiction.

The Procedures Manual allows licensees to maintain these records in various ways. However, Taxpayer does not disagree the third-party's mileage tracking records were deficient. In such cases, in the absence of a functional, verifiable "tracking system," IFTA Procedures Manual, § P540.100 (2017), provides:

Distance records produced by a means other than a vehicle-tracking system that substantially document the fleet's operations and contain the following elements shall be accepted by the base jurisdiction as adequate under this article:

- .005 the beginning and ending dates of the trip to which the records pertain.
- .010 the origin and destination of the trip.
- .015 the route of travel.
- .020 the beginning and ending reading from the odometer, hubodometer, engine control module (ECM), or any similar device for the trip.
- .025 the total distance of the trip.
- .030 the distance traveled in each jurisdiction during the trip.
- .035 the vehicle identification number or vehicle unit number.

In the absence or failure to provide mileage and fuel records, IFTA Procedures Manual, § P530.100 (2013) states that: "Failure to maintain records upon which the licensee's true liability may be determined or to make records available upon proper request may result in an assessment as stated in IFTA Articles of Agreement Section R1200."

IFTA Procedures Manual, § P530.100 (2017) goes on to provide that: "Failure to maintain records upon which the licensee's true liability may be determined or to make records available upon proper request may result in an assessment as stated in IFTA Articles of Agreement Section R1200."

IFTA Articles of Agreement, § R1210 (2017) in relevant part, states that:

- .100 In the event that any licensee:
    - .005 fails, neglects, or refuses to file a tax return when due;
    - .010 fails to make records available upon written request by the base jurisdiction; or
    - .015 fails to maintain records from which the licensee's true liability may be determined**, the base jurisdiction shall proceed in accordance with .200 and .300.
    - .200 On the basis of the best information available to it, the base jurisdiction shall:
      - .005 determine the tax liability of the licensee for each jurisdiction; and/or
      - .010 revoke or suspend the license of any licensee who fails, neglects or refuses to file a tax report with full payment of tax when due, in accordance with the base jurisdiction's laws.
- Both .200.005 and .200.010 may be utilized by the base jurisdiction. For purposes of assessment pursuant to .100.010 or .100.015, the base jurisdiction must issue a written request for records giving the licensee thirty

(30) days to provide the records or to issue a notice of insufficient records.

**(Emphasis added).**

Exercising its authority and responsibility as the Taxpayer's chosen base jurisdiction, the Department assessed the additional IFTA tax and the now disputed penalty amount.

#### **D. Taxpayer's Objections to the Penalty Assessment.**

Taxpayer believes it can explain the fuel consumption discrepancy such that the Department should abate the \$130 penalty. Taxpayer explains that during six weeks in June and July it provides agricultural hauling services to large farms in Florida and Georgia comprising more than 5,000 acres. The farms "harvest thousands of acres of corn silage in a short time . . . ," and that the silage is blown into to Taxpayer's vehicles which transport to its destination. During this harvest, Taxpayer's vehicles are not refueled by a fuel retailer but the fuel is provided by the farm owner. Because of the harvest's time constraints, Taxpayer's vehicles are refueled from a 6,000 gallon bulk tank owned by Taxpayer's farm customer. Taxpayer states:

We were paid by the ton and fuel we consumed had nothing do with our compensation. In a normal day's time, we may haul anywhere from 10 [to] 30 loads of silage back to the dairy [farm].

. . . .

I reported all the miles traveled even those miles in fields that joined the dairy that did not require me to use a [public] roadway. I could not however report purchasing fuel that I did not purchase. I would have no proving that [fuel] consumption without receipts . . . . I reported the miles traveled because that's what my trucks did but I could not report the gallons because I did not purchase them nor do I have an idea how many gallons my trucks actually consumed during that harvest.

Taxpayer concludes that consumption of fuel provided by its out-of-state farm customers without direct cost adequately explains what otherwise might appear to be a discrepancy in its original reporting of miles and fuel consumption. Taxpayer believes it is entitled to abatement of the penalty because it took - what it believes - were sufficient steps to adequately document its vehicles' mileage and fuel consumption.

#### **E. Penalty Abatement.**

IFTA Articles of Agreement, § R1220.00 (2017) provides as follows:

The base jurisdiction may assess the licensee a penalty of \$50.00 or **10 percent of delinquent taxes**, whichever is greater, for failing to file a tax return, filing a late tax return, underpaying taxes due. .200 Penalties paid by the licensee shall be retained by the base jurisdiction. .300 Nothing in the Agreement limits the authority of a base jurisdiction to impose any other penalties provided by the laws of the base jurisdiction.

**(Emphasis added).**

In the absence of specific guidance provided under either the IFTA Articles of Agreement or the IFTA Procedures Manual and because the ten-percent penalty is "retained by the base jurisdiction," the Department turns to Indiana's own statutory and regulatory regime for direction.

IC § 6-8.1-10-2.1(a)(3) requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. IC § 6-8.1-10-2.1(a)(2) requires a ten-percent penalty if the taxpayer "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment."

IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall wave the penalty."

Departmental regulation [45 IAC 15-11-2](#)(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

Departmental regulation [45 IAC 15-11-2](#)(c) requires that in order to establish "reasonable cause," the taxpayer

must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed . . . ."

Under IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment - including the ten-percent IFTA penalty - is presumptively valid.

Taxpayer erred in failing to maintain the detailed records required by the IFTA necessary to allow Indiana - as the base jurisdiction - to apportion the proper amount of tax owed the various member jurisdictions. However, Taxpayer has presented a credible explanation for the shortcomings pointed out in the original audit report.

In these circumstances Department agrees that Taxpayer has met its burden under IC § 6-8.1-5-1(c) of establishing that its reporting deficiencies were not so egregious as to constitute "willful neglect." Based on a "case-by-case" analysis and after reviewing "the facts and circumstances of each taxpayer" the Department agrees that the ten-percent negligence penalty should be abated.

### **FINDING**

Taxpayer's protest is sustained.

May 20, 2020

*Posted: 07/29/2020 by Legislative Services Agency*  
An [html](#) version of this document.